

Remarks

This amendment is submitted in responses to the Final Rejection mailed April 29, 2005.

Review and reconsideration of this application are respectfully requested.

Claims 1-10 and 13-18 are pending in this application.

Claim 1 has now been presented to include a marked-up portion. Such marked-up portion was not shown in the previous amendment. In addition, at line 7, the amendment has been amended to define the tube as "an outer " conductive tube; and at line 9, the term "constructed of" has been deleted.

Claims 6, 9, 10 and 13 have been amended to better define the invention. No new matter has been included in the amendments.

Claims 1-11 and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kertesz (DE 4405409C1, in view of Sadler (GB-2258767A) and Shida et al (US 4,481,262) for reasons of record.


The Examiner does not take issue with the previous arguments made by applicant, but does suggest that applicant is arguing an unclaimed limitation. The Examiner states that applicant does not exclude polyamides from the outer layers of their tubes since the recitations of "comprising" (claim 1, line 2) and "constructed of" (claim 1, line 9) are not tantamount to the use of "consisting of" in either passage in claim 1, so that the resins recited in claim 1 need not be the only polymers in the tube's inner/outer layers.

With respect to the "comprising" language at line 2 of claim 1, such language is directed to the various layers present in the fuel transport tube and not to the composition of the layers.

With respect to the "constructed of" language at line 9 of claim 1, such language has been canceled from the claim. Applicant believes that the "constructed of" language did not present an issue with respect to whether or not the claim precluded a polyamide; however, with the cancellation of such language, the issue is now moot. Applicant contends that the Markush grouping includes "consisting of" language which precludes a thermoplastic or rubber material not included in the Markush group. Therefore, polyamides which are not included in the Markush grouping are excluded from the present invention.

In view of the foregoing amendments and remarks, it is believed that this application is now in condition for allowance, and an early indication thereof is earnestly solicited.

Respectfully requested,


J. Daniel Lykins
Reg No. 27,354

Dayco Products, LLC
1 Prestige Place
Miamisburg, Ohio 45342
Telephone No. (937) 226-5725